



**Cal/EPA**

**Central Coast  
Regional Water  
Quality Control  
Board**

81 Higuera Street  
Suite 200  
San Luis Obispo, CA  
93401-5427  
(805) 549-3147  
FAX (805) 543-0397

ATTACHMENT 1

**ATTACHMENT 1**



Pete Wilson  
Governor

To: Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814

From: <sup>Feri</sup>   
Roger W. Briggs, Executive Officer  
Regional Water Quality Control Board, Central Coast Region

Date: March 12, 1997

Subject: **DoD - FORT ORD; CEQA NOTICE OF EXEMPTION for the  
RECORD OF DECISION, BASEWIDE REMEDIAL  
INVESTIGATION SITES; INTERIM RECORD OF DECISION,  
BEACH TRAINFIRE RANGES; EXPLANATION OF  
SIGNIFICANT DIFFERENCES, CONSOLIDATION OF  
REMEDATION WASTE IN A CORRECTIVE ACTION  
MANAGEMENT UNIT (CAMU), OPERABLE UNIT 2 LANDFILL;  
FORT ORD, CALIFORNIA**

Enclosed are CEQA Notices of Exemption for the subject documents.  
Should you have any questions regarding these documents, please call  
Grant Himebaugh of my staff at (805) 542-4636.

DGH:sc/sg

Enclosures

c: Mr. John Adams  
State Water Resources Control Board  
Div. of Clean Water Programs  
P.O. Box 944212  
Sacramento, CA 94244-2120

Y:\grant\ftod\exempt.grt



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ensure their proper allocation and efficient use for the benefit of present and future generations.*

NOTICE OF EXEMPTION

TO: Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814

FROM: California Regional Water Quality  
Control Board, Central Coast  
Region, 81 Higuera St. Suite 200  
San Luis Obispo, CA 93401

Project Title:

Explanation of Significant Differences, Consolidation of Remediation Waste in a Corrective Action Management Unit (CAMU), Operable Unit 2 Landfill, Fort Ord, California.

Project Location - Specific:

Fort Ord California, near Monterey Bay in northwestern Monterey County, California; approximately 80 miles south of San Francisco.

Project - Location - City:

Between Cities of Seaside and Marina, California

Project - Location -County:

Monterey County

Description of Nature, Purpose, and Beneficiaries of Project:

The Lead Agency (the Army) determined that a significant change to the selected remedy, as described in the July 25, 1995 "Record of Decision, Operable Unit 2, Fort Ord Landfills, Fort Ord, California," is necessary. The explanation of significant differences addresses soil and debris (remediation waste) that will be excavated from remediation areas at Ft. Ord and consolidated within the main landfill boundaries. The remediation waste will be used as foundation layer material in lieu of "clean" (uncontaminated) soil as described in the OU2 ROD.

Reason Project is Exempt:

This is a federal project, but not a "project" as defined by CEQA. No State agency is carrying out the project nor approving the project (Public Resource Code Section 21065 and 21080 (a).) The Regional Water Quality Control Board and Department of Toxic Substances Control are commenting on the project, but the U.S. Army has authority to proceed without State comment.

Name of Public Agency Approving Project:

The United States Department of the Army

Name of Public Agency Carrying Out Project:

The United States Department of the Army

Contact Person:

Grant Himebaugh

Area Code/Telephone/Extension"

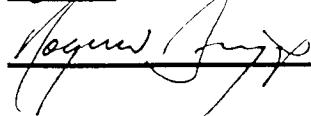
(805) 542-4636

If filed by applicant:

N/A

Date Received for Filing: \_\_\_\_\_

Signature



Title:

Executive Officer

NOTICE OF EXEMPTION

TO: Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814

FROM: California Regional Water Quality  
Control Board, Central Coast  
Region, 81 Higuera St. Suite 200  
San Luis Obispo, CA 93401

Project Title:

Interim Record of Decision, Beach Trainfire Ranges, Fort Ord, California.

Project Location - Specific:

Fort Ord California, near Monterey Bay in northwestern Monterey County, California; approximately 80 miles south of San Francisco.

Project - Location - City:

Between Seaside and Marina, California

Project - Location - County:

Monterey County

Description of Nature, Purpose, and Beneficiaries of Project:

This Interim Record of Decision (ROD) presents the selected remedial actions for soil at the Remedial Investigation (RI) Site 3, the Beach Trainfire Ranges, at Fort Ord. This Interim ROD does not address ordnance or explosives (OE), which will be addressed in a separate process. The other RI Sites, 2 and 12, 16 and 17, 31, and 39 are addressed in a separate ROD.

Reason Project is Exempt:

This is a federal project, but not a "project" as defined by CEQA. No State agency is carrying out the project nor approving the project (Public Resource Code Section 21065 and 21080 (a).) The Regional Water Quality Control Board and Department of Toxic Substances Control are commenting on the project, but the U.S. Army has authority to proceed without State comment.

Name of Public Agency Approving Project:

The United States Department of the Army

Name of Public Agency Carrying Out Project:

The United States Department of the Army

Contact Person:

Grant Himebaugh

Area Code/Telephone/Extension"

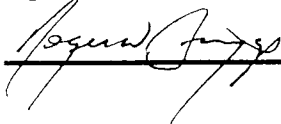
(805) 542-4636

If filed by applicant:

N/A

Date Received for Filing: \_\_\_\_\_

Signature



Title:

Executive Officer

NOTICE OF EXEMPTION

TO: Office of Planning and Research  
1400 Tenth Street  
Sacramento, CA 95814

FROM: California Regional Water Quality  
Control Board, Central Coast  
Region, 81 Higuera St. Suite 200  
San Luis Obispo, CA 93401

Project Title:

Record of Decision, Basewide Remedial Investigation Sites, Fort Ord, California.

Project Location - Specific:

Fort Ord California, near Monterey Bay in northwestern Monterey County, California; approximately 80 miles south of San Francisco.

Project - Location - City:

Between Seaside and Marina, California

Project - Location - County:

Monterey County

Description of Nature, Purpose, and Beneficiaries of Project:

This Record of Decision (ROD) presents the selected remedial actions for soil and ground water at the sites covered by the Basewide Remedial Investigation/Feasibility Study (RI/FS) Program at Fort Ord. Surface water outfalls and the Beach Trainfire Ranges (Site 3) are not addressed in this ROD. These sites are addressed separately by the Interim Action (IA) ROD, and the pending Site 3 ROD, respectively.

Reason Project is Exempt:

This is a federal project, but not a "project" as defined by CEQA. No State agency is carrying out the project nor approving the project (Public Resource Code Section 21065 and 21080 (a).) The Regional Water Quality Control Board and Department of Toxic Substances Control are commenting on the project, but the U.S. Army has authority to proceed without State comment.

Name of Public Agency Approving Project:

The United States Department of the Army

Name of Public Agency Carrying Out Project:

The United States Department of the Army

Contact Person:

Grant Himebaugh

Area Code/Telephone/Extension"

(805) 542-4636

If filed by applicant:

N/A

Date Received for Filing: \_\_\_\_\_

Signature



Title:

Executive Officer



**Cal/EPA**

State Water  
Resources  
Control Board

Mailing Address:  
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Sacramento, CA  
95812-0100

901 P Street  
Sacramento, CA  
95814  
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FAX (916) 657-2127

**FEB 10 1997**

Mr. Sam Collinson  
Regulatory Branch  
Office of the Chief of Engineers  
U.S. Army Corps of Engineers  
ATTN: CECW-OR  
20 Massachusetts Avenue NW  
Washington, D.C. 20314-1000

Return to Inge

**ATTACHMENT 3**

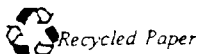
Dear Mr. Collinson:

**U.S. ARMY CORPS OF ENGINEERS (CORPS) REQUEST FOR WATER  
QUALITY CERTIFICATION OF NATIONWIDE PERMIT (NWP) PROGRAM:  
DECISION ON CERTIFICATION.**

The Corps published its *Final Notice of Issuance, Reissuance, and Modification of Nationwide Permits* in the Federal Register on December 13, 1996 triggering the start of the 60-day review period [33 CFR 325.2(b)(ii)] for states to act on water quality certification. In my letter to you dated January 9, 1997, I requested a time extension to allow the State sufficient time to take appropriate actions on all of the NWPs. The Corps has verbally denied my request; consequently, I am taking this interim action to allow adequate time to complete our process for review and consideration of the NWP program.

Certification of an NWP requires a finding by the State that the activities permitted by the NWP will not violate water quality standards individually or cumulatively over the term of the permit. Certification must be consistent with the requirements of the Federal Clean Water Act (CWA), the California Environmental Quality Act (CEQA), the California Endangered Species Act (CESA), and the State Water Resources Control Board's (SWRCB) mandate to protect beneficial uses of waters of the State. In California, the broad scope of the NWPs includes activities which may have the potential to cause significant adverse environmental impacts.

Relying on all the information available to assess the potential impacts, the NWPs have been grouped into three classes. Consistent with this assessment of water quality impacts I am taking the following actions:



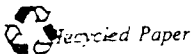
*Our mission is to preserve and enhance the quality of California's water resources, and  
ensure their proper allocation and efficient use for the benefit of present and future generations.*

1. I hereby certify all Class 1 NWP's subject to the Conditions and Limitations summarized in Table 1 and described thereafter.

Class 1 NWP's are Categorically Exempt from the provisions of CEQA. Activities authorized under these permits should not result in more than minimal individual or cumulative impacts.

TABLE 1: CLASS 1 NWP's

	DESCRIPTION	FINAL ACTION
1	<b>Aids to Navigation:</b> Allows the placement of U.S. Coast Guard (USCG)-approved navigational aids.	Certify subject to Category I conditions and limitations.
4	<b>Fish and Wildlife Harvesting:</b> Allows fish and wildlife harvesting devices and activities, including shellfish seeding (but not in wetlands or sites that support submerged aquatic vegetation).	Certify subject to Category I conditions and limitations.
5	<b>Scientific Measurement Devices:</b> Allows gages, recording devices, water quality testing and improvement devices, and similar structures. Up to 25 cubic yards of fill is also authorized for weirs and flumes constructed primarily to record water quantity and velocity. Notification is required for fill of greater than 10 cubic yards.	Certify subject to Category I conditions and limitations, and Notification Requirements.
6	<b>Survey Activities:</b> Allows core sampling, seismic exploration, and plugging of exploration bore holes.	Certify subject to Category I conditions and limitations, and Notification Requirements.
9	<b>Structures in Anchorage Areas:</b> Allows placement of structures to facilitate mooring of vessels within anchorage areas established by the USCG.	Certify subject to Category I conditions and limitations.
10	<b>Mooring Buoys:</b> Allows non-commercial, single-boat mooring buoys.	Certify subject to Category I conditions and limitations.
11	<b>Temporary Recreation Structures:</b> Allows temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events. Structures must be removed within 30 days after use has been discontinued.	Certify subject to Category I conditions and limitations, and Notification Requirements.
20	<b>Oil Spill Cleanup:</b> Allows cleanup of oil and hazardous substances providing work is done in accordance with Federal regulations and any existing State contingency plans, and has the concurrence of the Federal Regional Response Team.	Certify subject to Category I conditions and limitations, and Notification Requirements.
22	<b>Removal of Vessels:</b> Allows minor discharges of fill in connection with removal of disabled or abandoned vessels or man-made obstructions to navigation.	Certify subject to Category I conditions and limitations.

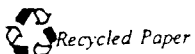


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24	<b>State Administered Section 404 Programs:</b> Allows "any activity permitted by a state administering its own Section 404 permit program".	Certify.
28	<b>Modification of Marinas:</b> Allows the reconfiguration of existing dock space in an authorized marina. No dredging or expansion of any kind would be permitted.	Certify subject to Category I conditions and limitations, and Notification Requirements.
29	<b>Single-Family Housing:</b> Discharges of dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands for the construction or expansion of a single-family home and attendant features for an individual permittee subject to certain conditions and limitations.	Certify subject to Category I conditions and limitations, and Notification Requirements.
30	<b>Moist Soil Management for Wildlife:</b> Allows discharges of dredged or fill material into non-tidal wetlands necessary to manage, construct, and/or maintain habitat and feeding areas for wildlife. NWP applies to Federally-owned or managed and State-owned or managed property.	Certify subject to Category I conditions and limitations, and Notification Requirements.
32	<b>Completed Enforcement Actions:</b> Allows any structure, work, or discharge which is in compliance with a final Federal court decision, consent decree, or settlement agreement resulting from a Federal enforcement action under Section 404 or Section 10.	Certify subject to Category I conditions and limitations, and Notification Requirements.
34	<b>Cranberry Production Activities:</b> Allows discharges associated with expansion or modification of existing cranberry operations. The total affected area cannot exceed 10 acres and there can be no net loss of wetland acreage.	Certify subject to Category I conditions and limitations, and Notification Requirements.
36	<b>Boat Ramps:</b> Allows construction of boat ramps, provided that (1) the discharge does not exceed 50 cubic yards of rock, stone, gravel, or precast concrete; (2) the ramp is not wider than 20 feet; (3) the base is of stone or other "suitable" material; (4) the excavation is limited to the area necessary and excavated material is removed; and (5) no material is placed in SAS including wetlands.	Certify subject to Category I conditions and limitations, and Notification Requirements.
38	<b>Cleanup of Hazardous and Toxic Waste:</b> Allows cleanup of hazardous or toxic waste, performed, ordered, or sponsored by an authorized governmental entity or resulting from a court order or settlement.	Certify subject to Category I conditions and limitations, and Notification Requirements.

2. I hereby deny all Class 2 NWPs without prejudice as an interim action to allow adequate time for the SWRCB staff to develop conditions and prepare a negative declaration for the Class 2 NWPs.

Class 2 NWPs are those which may be certified if additional conditions and restrictions are developed to ensure that all potential impacts have been mitigated to a level of insignificance. Class 2 NWPs authorize activities that



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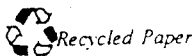
FEB 10 1997

may individually or cumulatively result in significant adverse impacts to the environment. If appropriate conditions/limitations are not developed for certain activities, certification of those activities may be denied. SWRCB staff will prepare and circulate a Negative Declaration for Class 2 NWP's. My goal is to be in a position to reconsider certification of the Class 2 NWP's by August 1997. In the interim, water quality certification applications will be processed on an individual project basis.

#### CLASS 2 NWP's

2	Structures in Artificial Canals	27	Wetland and Riparian Restoration and Creation Activities
3	Maintenance	31	Maintenance of Existing Flood Control Projects
12	Utility Line Backfill	33	Temporary Construction, Access, and Dewatering
15	USCG Approved Bridges	35	Maintenance Dredging of Existing Basins
18	Minor Discharges	37	Emergency Watershed Protection
19	25 Cubic Yard Dredging	40	Farm Buildings

3. I hereby deny without prejudice all Class 3 NWP's. Class 3 activities may individually or cumulatively have a significant effect on the environment. These NWP's are extremely difficult to condition on a Statewide basis to ensure that the activities authorized would not result in significant adverse impacts, or may result in Federal preemption problems. A decision to deny any NWP may be reconsidered at a future time. Class 3 projects are not precluded in California. As has been the case with all NWP's for the past five years, water quality certification applications will be processed on an individual project basis.



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## CLASS 3 NWP's

7	Outfall Structures	17	Hydropower Projects
8	Oil and Gas Structures	21	Surface Mining
13	Bank Stabilization	23	Approval of Categorical Exclusions
14	Road Crossing	25	Structural Discharge
16	Return Water Upland Disposal Areas	26	Isolated Headwaters Discharge

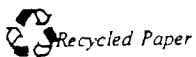
## CONDITIONS AND LIMITATIONS OF CERTIFICATION

**CATEGORY I:** Category I conditions/limitations apply to all Class 1 NWP's.

1. **Porter-Cologne Water Quality Control Act:** All permitted activities shall comply with all requirements of the *California Porter-Cologne Water Quality Control Act*.
2. **Non-Severability:** If any conditions are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.
3. **Water Diversion and Use:** Certification is denied for any activity involving a new or increased diversion or impoundment of water, unless the SWRCB has already approved a water rights permit, or such diversion or impoundment is solely for the purpose of drainage or flood control.
4. **Other Federal Permits and Licenses:** Certification is denied for any activity requiring the issuance or renewal of more than one Federal permit or license.

**NOTIFICATION:** The permit applicant will be required to provide notification of the proposed activity to the SWRCB and the appropriate Regional Water Quality Control Board (RWQCB). Notification requirements apply to select Class 1 NWP's (see Table 1).

**Notification Requirements:** Prior to commencing work on the proposed activity, the applicant must submit to the appropriate RWQCB and the SWRCB a notification containing at a minimum the information listed below. If a Preconstruction Notification (PCN) is required as part of the Corps' Section 404 permit, the PCN may



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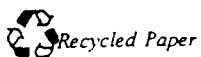
be used instead. To avoid project delays, the applicant should submit the notification as early as possible. If the applicant is not notified by the RWQCB within 30 days of the postmarked date of the Notification, the applicant may assume that the project meets the conditions of certification.

1. **Application Information:** Name, full address, and daytime telephone number of the responsible party or parties.
2. **Site Information**
  - a. Address (including city and county), assessor's parcel number, and if available, the longitude and latitude of the project site.
  - b. Name and location of water bodies or special aquatic sites, including wetlands, which are affected either directly or indirectly by the project.
3. **Project Information:** Brief description of the overall activity or project, including a brief description of any related activities to be developed as the result of the project.
4. **Discharge Information:** If the activity involves the discharge of dredged and/or fill materials into a wetland or other water body, describe the types of material being discharged and the amount of each type cubic yards. Quantify the total surface area of wetlands or other waters to be filled.
5. **Other Permits/Approvals:** If any other State, Federal, or local agency(ies) have been contacted for project approval, list the agency(ies) contacted.
6. **Applicant Signature and Statement:** The applicant notification must be signed by the applicant. The notification must include a statement that the submitted information is complete and accurate.

### APPEAL RIGHTS

If the Corps, as applicant for Section 401 Water Quality Certification, disagrees with this decision, it has the right to seek relief via petition for review by the SWRCB, in accordance with the California Code of Regulations Section 3867.

Thank you for your cooperation. As I stated earlier, it is our intention to certify as many NWP's as possible, consistent with protection of beneficial uses of water under



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California law. If you require further assistance, please telephone Marla Lafer, the staff person most knowledgeable on this issue, at 916/657-0926. You may also call William R. Campbell, Chief of the Nonpoint Source Loan Unit, at 916/657-1043.

Sincerely,

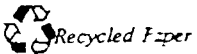
  
Walt Pettit  
Executive Director

cc: Mr. Art Champ, Chief  
Regulatory Branch  
Sacramento District  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, CA 95814-2922

Mr. Calvin Fong, Chief  
Regulatory Branch  
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San Francisco, CA 94105-2197

Mr. Richard J. Schubel, Chief  
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Los Angeles District  
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Mr. Wade Eakle  
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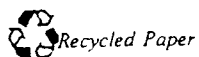


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FEB 10 1997

cc: All Regional Water Quality  
Control Board Executive Officers

Mr. Peter M. Rooney  
Undersecretary  
California Environmental  
Protection Agency  
555 Capitol Mall  
Sacramento, CA 95814



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ensure their proper allocation and efficient use for the benefit of present and future generations.*

# ***ARAR PROCESS GUIDE***

*Prepared by the ARAR Work Group consisting of staff from  
U. S. Environmental Protection Agency,  
Department of Toxic Substances Control,  
State Water Resources Control Board and  
Regional Water Quality Control Boards*

***FEBRUARY 16, 1995***

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*V. SAMPLE FORMAT FOR ARAR PRESENTATION.....page 10.*

## ACKNOWLEDGEMENTS

This document was made possible by the collaborative efforts of the members of the Cal/EPA and U.S. EPA ARARs Workgroup:

---

John Adams\* (916-227-4358)  
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Cal EPA/ State Water Resources Control Board

Ton Vorster \*\*  
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Cal EPA/Regional Water Quality Control Board

Donn Diebert\* (916-255-3728)  
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Linda Hogg \*\*  
Bonnie Wolstoncroft

Cal EPA/ Department of Toxic Substances Control

Greg Baker\* (415-744-1491)  
John Chesnutt \*\*  
Marcia Preston

U.S. Environmental Protection Agency

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\* Any questions concerning the general use of this document may be directed to one of these agency points of contact.

\*\* Principal authors

# ***ARAR PROCESS GUIDE***

**February 16, 1995**

## ***I. INTRODUCTION***

This document was prepared to assist Remedial Project Managers, working on cleanup of Superfund sites, select and refine applicable, relevant and appropriate requirements (ARARs) in a timely fashion.

Currently, there is some difficulty in identifying federal and state ARARs, required by the National Contingency Plan (NCP), in sufficient detail to prevent misunderstandings or difference of opinions during preparation of the Remedial Investigation Workplan/Feasibility Report or the Record of Decision (ROD). These differences can result in significant delays finalizing a document and implementing the response action. There are several critical steps which must be taken in order to clarify requirements and reach consensus:

- A.     **Timing** - Determination of potential ARARs throughout the NCP process, beginning at the earliest stage possible, usually the RI scoping.
- B.     **Critical data needs** - Determine critical data needs to meet these ARARs. If the data needs are not identified early on, significant time may be lost to collect the necessary data to make a determination on how a specific requirement may apply.
- C.     **Site/remedy specific application** - Clarify the site/remedy specific application of the requirements. This must be accomplished as soon as possible in the process to reach consensus on compliance with ARARs.
- D.     **Acceptance** - Obtain early acceptance by the lead agency and/or the EPA of an ARAR and its applicability.
- E.     **Resolve ARAR problems** - Identify and resolve ARAR problems early in the process before it can delay a project or a remedy. This should be handled through informal dispute resolution or formal dispute of an ARAR determination.

A Workgroup was formed consisting of representatives of the U.S. Environmental Protection Agency, Region 9, (EPA) and the California Environmental Protection Agency, consisting of the



Department of Toxic Substances Control (DTSC), the State Water Resources Control Board and Regional Water Quality Control Boards (State and Regional Boards) to document ways to improve the current process and formulate a guidance document for Remedial Project Managers. The Workgroup's aim was to meet the following two objectives with the development of this process guidance:

1. *Prevent time delays caused by ambiguity and disagreements concerning the identification of and compliance with ARARs, and*
2. *Formalize a process for ongoing, active dialogue on ARAR identification throughout the CERCLA process.*

## **II. USE OF GUIDE**

The ARAR Development Process in Section III. provides guidance and should be used to assist the project team in meeting the specific project goals and should be followed as much as possible, while adjustments may be considered to meet individual project needs. In using this guidance the following should be considered:

- A. Follow as close as is reasonably possible. Due to advanced state of many projects, application will need to be tailored to the specific project needs in order to meet the above stated objectives. EPA and the State are committed to implementing this guidance.
- B. EPA and the State recognize that this process guide conforms most closely to the NCP activities conducted at federal NPL sites. Thus, all procedures and timeframes listed in this guide may not conform to site-specific agreements, orders, or processes followed at EPA Fund- or Enforcement-lead sites, or at all federal facility sites for that matter. For instance, the Draft/Draft Final sequence of document production, as well as some timeframes listed, may not apply at all sites. This process guide, however, can still be used as a resource for all other sites.
- C. This process guide, while intended for use primarily at NPL sites, may also be used at non-NPL sites where appropriate, to insure that Federal and State laws are adequately considered in the cleanup process.
- D. This process guide does not specifically address the ARARs process for Removal or

Interim Actions, both of which consider ARARs to some degree. Please refer to the NCP and EPA guidance documents for further information.

- E. Responsibilities in this guide are assigned to the lead and support agencies (see NCP 300.5 for full definitions). The lead agency is most often EPA, or another federal agency (i.e. DOD, DOE) if the site is a federal facility, but can sometimes be the State. Support agencies are most often the State, and EPA (in the case of a federal facility site).

EPA and the State would appreciate feedback on this guide. Comments or questions can be directed to members of the State/EPA ARARs Workgroup listed in the Acknowledgement Section. This guide may be updated in the future.

### ***III. GUIDING PRINCIPLES***

- A. Identification of ARARs is critical in developing a response action which meets the requirements and the intent of CERCLA. ARAR identification is therefore a high priority activity and requires a focused effort from the agencies.
- B. ARAR identification and refinement is an iterative process throughout the CERCLA investigation and feasibility study process. (General requirements identified during the scoping phase become more focused and specific as the nature and extent of the problem and the remedial action alternatives are defined.)
- C. Identification of potential ARARs early in the process is necessary in order to determine the minimal data needs required to meet such ARARs and/or to determine if and how certain ARARs apply for specific remedial alternatives.
- D. The process is characterized as an active dialogue between the EPA and the State, and the lead federal agency if it is not EPA. Furthermore, EPA and the State will actively seek agreements on interpretations of potential ARARs.
- E. EPA and the State will provide legal and policy review of potential ARARs early in the identification process and no later than the Draft RI/FS or Draft FS. If the lead is a federal agency other than EPA, EPA and the State will also engage in active dialogue with legal staff from that agency (including initiating such dialogue if necessary).

- F. EPA will notify the State of its position concerning State and Federal ARARs once ARARs have been presented.
- G. EPA and State will notify each other as early as practicable of potential disputes concerning ARARs and work towards preventing formal disputes. (For federal facilities, formal dispute procedures, as described in Federal Facility Agreements (Face), remain available as a last resort to settle differences.)
- H. Significant new information or conditions impacting the protection of public health and/or the environment, may require that ARARs be reassessed, even after a ROD has been finalized.
- I. The State will provide one State position regarding all State ARARs.
- J. The process guide is applicable to individual Operable Units as well as for site-wide RI and FS documents or combined RI/FS documents. Therefore, several ARAR identification processes may occur simultaneously.

#### ***IV. ARARs DEVELOPMENT PROCESS***

##### **RI/FS<sup>1</sup> Scoping**

Lead and support agencies (see NCP §300.5 for definitions) call scoping meeting to discuss potential ARARs/TBCs<sup>2</sup> and ARARs/TBCs data needs. Potential Location- and Chemical-specific ARARs/TBCs, including data needs, should be discussed. Additionally, the potential remedial action options being considered should be discussed. The lead agency should prepare and distribute minutes of this scoping meeting.

As a result of the scoping meeting, lead agency produces letter identifying potential ARARs/TBCs (noting those agreed to and not agreed to) and ARARs/TBCs data needs. With respect to ARARs/TBCs that are not agreed upon, for which there are data needs, the lead agency shall either agree that the data is needed or make clear that at this time

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<sup>1</sup> Applies also to stand alone RI and FS Scoping and Workplans

<sup>2</sup> 40 CFR 300.430(b)(9), 300.515(h)(2), and 300.400(g)

they do not intend to obtain such data.

EPA and State, and lead federal agency if not EPA, initiate dialogue and meetings to discuss ARARs/TBCs not agreed upon at this stage.

Lead agency must formally request potential ARARs/TBCs from support agency sometime between this scoping stage and the time that site characterization data are available at the RI Report stage. Within 30 working days of receipt of the request, the support agency must send ARARs/TBCs in writing<sup>3</sup>. The lead and support agency will exchange their respective potential ARARs/TBCs during the Draft RI Report process<sup>4</sup>.

## RI/FS<sup>5</sup> Workplan

Includes section discussing potential ARARs/TBCs and ARARs/TBCs data needs.

## Draft RI Report

Presents site characterization data<sup>6</sup>.

Lead agency presents "best shot" at ARARs/TBCs, including discussion of all potential State and Federal ARARs/TBCs identified at scoping stage<sup>7</sup>, and additional ARARs/TBCs data needs.

Support agencies have 10 working days minimum, 15 days maximum to comment on the ARARs/TBCs determinations in either the Draft or Draft Final document, unless a Federal Facility Agreement (FFA), Order, or other Agreement specifies a longer period<sup>8</sup>.

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<sup>3</sup> 40 CFR 300.515(h)(2)

<sup>4</sup> 40 CFR 300.430(d)(3)

<sup>5</sup> Applies also to stand alone RI and FS Scoping and Workplans

<sup>6</sup> The California Base Closure Environmental Committee has produced a site characterization guidance document entitled, "Recommended Content and Presentation for Reporting Hydrogeologic Data During Site Investigations" (August 5, 1993), which provides useful tips on the preparation of RI Reports for both military and non-military sites.

<sup>7</sup> 40 CFR 300.430(d)(3)

<sup>8</sup> 40 CFR 300.515(h)(3)

As discussed in Scoping section, lead agency must have formally requested potential ARARs/TBCs from support agency no later than at the Draft RI Report stage. Once request is made, support agency must send ARARs/TBCs in writing within 30 working days of receipt of the request, unless an FFA, Order, or other Agreement specifies a longer period. Includes request for Action-specific ARARs. Other pertinent advisories, criteria, or TBCs may also be discussed or sent in writing at this time. ARARs/TBCs data needs should also be identified<sup>9</sup>.

If a federal agency other than EPA is the lead agency and does not perform this request for ARARs/TBCs, EPA, or the State in the case of non-NPL federally-owned sites, will write a letter to the agency reminding it of this requirement.

RI Report review and comment, and ARARs/TBCs identification by agencies (following request) will occur concurrently.

## Draft Final RI Report

Lead agency will provide a copy of the Draft Final RI Report to the support agencies.

If the support agencies did not have the opportunity to review and comment on ARARs/TBCs determinations during the Draft RI step or if the Draft Final RI Report contains determinations that had not been previously reviewed, the support agencies are allowed to review this report for 10 working days minimum, 15 days maximum, unless an FFA, Order, or other Agreement specifies a longer period<sup>10</sup>. To the extent possible, Location- and Chemical-specific ARARs/TBCs should be resolved by this stage in the process.

If the support agencies do not agree with changes made by the lead agency or if the lead agency did not incorporate ARARs/TBCs submitted by the support agencies, the support agencies can enter into informal negotiations with the lead agency, can file a written objection in the administrative record, can object in writing at the Proposed Plan stage, or may have other options under a site-specific FFA, Order, or other Agreement. For instance, under most FFA's, the support agency has 30 days from receipt of the Draft Final RI to informally resolve issues and/or enter into a formal dispute resolution process.

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<sup>9</sup> 40 CFR 300.515(h)(2)

<sup>10</sup> 40 CFR 300.515(h)(3)

## FS Scoping

Lead agency calls scoping meeting.

Draft FS Report Outline is discussed, including the remedial alternatives for the FS detailed analysis and potential ARARs/TBCs for each alternative. The lead agency shall prepare and distribute minutes of scoping meeting.

As follow-up to the meeting, the lead agency shall formally request potential ARARs/TBCs from support agency within 30 working days of receipt of the request. This request shall contain the initial screening of the various remedial alternatives with an indication of which the lead agency is going to include in the comparative analysis. The NCP requires this after the initial screening of remedial alternatives has been completed but prior to initiation of the comparative analysis conducted during the detailed analysis phase of the FS<sup>11</sup>. The lead agency will also exchange the ARARs/TBCs it has identified with the support agency.

If a federal agency other than EPA is the lead agency and does not make this request for ARARs/TBCs, EPA, or the State in the case of non-NPL federally-owned sites, will write a letter to the federal agency reminding it of this requirement and its responsibility to communicate identified ARARs/TBCs to the support agency.

## Draft FS Report

Lead agency prepares FS Report which describes Location-, Chemical-, and Action-specific ARARs, potential waivers, TBCs, as well as assesses additional ARARs/TBCs data needs<sup>12</sup>.

Agencies have 10 working days minimum, 15 days maximum to comment on the ARARs/TBCs determinations unless an FFA, Order, or other Agreement specifies a longer period<sup>13</sup>.

Agencies review Draft FS Report and ARARs/TBCs determinations concurrently.

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<sup>11</sup> 40 CFR 300.515(h)(2)

<sup>12</sup> 40 CFR 300.430(e)

<sup>13</sup> 40 CFR 300.515(h)(3)

**Draft Final FS Report**

Lead agency will provide a copy of the Draft Final FS Report to the support agencies.

If the support agencies did not have the opportunity to review and comment on ARARs/TBCs determinations during the Draft FS step or if the Draft Final FS Report contains determinations that had not been previously reviewed, the support agencies are allowed to review and comment on the report for 10 working days minimum, 15 days maximum, unless an FFA, Order, or other Agreement specifies a longer period<sup>14</sup>.

If the support agencies do not agree with changes made by the lead agency or if the lead agency did not incorporate ARARs/TBCs submitted by the support agencies, the support agencies can enter into informal negotiations with the lead agency, can file a written protest in the administrative record, can object in writing at the Proposed Plan stage, or may have other options under a site-specific FFA, Order, or other Agreement. For instance, under most FFA's, the support agency has 30 days from receipt of the Draft Final RI to informally resolve issues and/or enter into a formal dispute resolution process.

**Proposed Plan**

Support agency is allowed to review and comment on the proposed plan prior to public release, including ARARs/TBCs determinations and waivers, for 5 working days minimum, 10 days maximum unless an FFA, Order, or other Agreement specifies a longer period<sup>15</sup>.

Agencies are allowed to review and comment on the proposed plan for 30 calendar days (60 calendar days maximum upon request from member of the public to lead agency) when it is released for public comment<sup>16</sup>. Responses to comments will appear in the Responsiveness Summary, which is contained in the Record of Decision.

**Draft ROD**

Agencies review and comment on the Draft ROD with the Responsiveness Summary (a

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<sup>14</sup> 40 CFR 300.515(h)(3)

<sup>15</sup> 40 CFR 300.515(h)(3) and 300.430(f)(2)

<sup>16</sup> 40 CFR 300.430(f)(3)(i)(C)

summary of and responses to comments received during the proposed plan public comment period) and ARARs/TBCs determinations and waivers for 10 working days minimum, 15 days maximum<sup>17</sup>, unless an FFA, Order, or other Agreement specifies a longer period. The Draft ROD should not contain significant changes, particularly in the use of waivers or with respect to ARARs/TBCs determinations, which were not presented to the public.

TBCs become performance standards.

## Draft Final ROD

ROD identifies final ARARs/TBCs for the site that the remedy will attain, considering Federal, State, other support agency, and community concerns<sup>18</sup>.

If the support agencies did not have the opportunity to review and comment on the Responsiveness Summary or ARARs/TBCs determinations during the Draft ROD step or if the Draft Final ROD Report contains determinations that had not been previously reviewed, the support agencies are allowed to review and comment on the report for 10 working days minimum, 15 days maximum, unless an FFA, Order, or other Agreement specifies a longer period<sup>19</sup>.

If the support agencies do not agree with changes made by the lead agency or if the lead agency did not incorporate ARARs/TBCs submitted by the support agencies, the support agencies can enter into informal negotiations with the lead agency, can file a written protest in the administrative record, or may have other options under a site-specific FFA, Order, or other Agreement. For instance, under most FFA's, the support agency has 30 days from receipt of the Draft Final ROD to informally resolve issues and/or enter into a formal dispute resolution process.

## Final ROD

Congratulations !!!

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<sup>17</sup> 40 CFR 300.515(h)(3)

<sup>18</sup> 40 CFR 300.430(f)(4) and (f)(5)

<sup>19</sup> 40 CFR 300.515(h)(3)



***V. SAMPLE FORMAT FOR ARARS PRESENTATION (Attached)***

ARARs summaries are commonly presented in table format in addition to narrative language in the document which should provide a more detailed ARAR analysis. It is important to include an analysis of the manner in which the ARAR specifically applies to the remedy and to include the resulting cleanup standard in the table or the narrative text. The attached tables provide an example of an acceptable format for summarizing ARARs. Attached are ARAR tables from the Final Site-wide ROD for Sacramento Army Depot. This ARAR table should be considered for format purposes only (narrative ARAR language concerning this particular ARAR analysis is not included), as an ARAR analysis should be done on a site- and remedy-specific basis. Furthermore, this ARAR table is a living document and is therefore subject to revisions.

LAND USE COVENANT

**RECORDING REQUESTED BY:**

County of Sacramento  
Economic Development Department  
700 H Street, Suite 7650  
Sacramento, California 95814

**WHEN RECORDED, MAIL TO:**

Department of Toxic Substances Control  
Northern California Region  
10151 Croydon Way, Suite #3  
Sacramento, California 95827  
Attention: Anthony J. Landis, P.E., Chief  
Office of Military Facilities

(Space Above This Line For Recorder's Use Only)

COVENANT TO RESTRICT USE OF PROPERTY  
ENVIRONMENTAL RESTRICTION

Re: Parcel on Page 0607, Book 961030, County of Sacramento

This Covenant and Agreement ("Covenant") is made by and between the County of Sacramento (the "Covenantor"), the current Owner of the herein described real property situated near Rancho Cordova in the County of Sacramento, State of California, described in Exhibit "A" and shown on Exhibit "B", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (Department), and the Central Valley Regional Water Quality Control Board (Water Board). Pursuant to California Civil Code section 1471(c), the Department and the Water Board have determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence in the groundwater of hazardous materials as defined in the California Health and Safety Code ("H&SC") section 25260(d). The Covenantor, the Department and the Water Board, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment.

ARTICLE I  
STATEMENT OF FACTS

1.01. The Property, totaling approximately 24.9 acres is more particularly described and depicted in Exhibits "A" and "B". The Property is located in the area now generally bounded by

Lower Placerville Road on the north, Whitehead Street on the west, Mather Boulevard on the South, Bullard Street on the east.

1.02 The Air Force (AF) is cleaning up groundwater contamination that may extend beneath the Property under the supervision and authority of the Department and the United States Environmental Protection Agency (U.S. EPA). The Property is within a portion of the former Mather Air Force Base. Remediation of the groundwater is being performed pursuant to a Record of Decision (ROD) pursuant to 40 Code of Federal Regulations (CFR) Part 300.400 et. seq., with regulatory oversight provided by the Department pursuant to Chapter 6.8 of Division 20 of the HS&C. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including volatile organic compounds may remain in the groundwater in and under portions of the Property, the ROD provided that land-use restrictions, as appropriate, would be required as part of the site remediation. The AF circulated the ROD for public review and comment. The ROD was signed by the Department and US EPA in April 1996. Remediation includes a groundwater extraction, treatment, and monitoring system ("System"). The location of the Groundwater Treatment system and the monitoring wells are shown on the map attached as Exhibit "C". The remedial action is under construction and planned to begin operation in April 1998 pursuant to the Preliminary Engineering Report for Phase I Groundwater Remediation of Main Base/Strategic Air Command Industrial Area Plume, July 1997.

1.03. Contaminated groundwater near the Property is found in several zones. Volatile organic compounds (VOCs) and perchlorate are the main contaminants found in groundwater at Mather AFB. It appears that VOCs may be located in at least two zones near the Property. The first zone is the water table unit and it is about 85 to 95 feet below ground surface (bgs) at the Property. The second unit is a hydrogeologic unit labeled unit "B" and is about 95 to 120 feet bgs at the Property. Contaminants and the concentration ranges in the groundwater monitoring wells nearest the Property include trichloroethane (TCE 0.5 to 18 ug/l ), Perchloroethylene (PCE 0.7 to 290 ug/l(ppb)), and carbon tetrachloride (CCl<sub>4</sub> 0.5 to 1.3 ug/l). The approved cleanup standards are the Maximum Contaminant Level (MCL) found in both 40 CFR Part 141 and/or Title 22 California Code of Regulations (CCR) Section 64444 and are 5.0 ug/l for TCE, 5.0 ug/l for PCE, and 0.5 ug/l for CCl<sub>4</sub>.

Ammonium perchlorate has been historically used in as an oxidizer in rocket fuel. Perchlorate ion (ClO<sub>4</sub><sup>-</sup>) has been found in three of the four main base drinking water supply wells. These wells draw water from depths between approximately 186 at the shallowest level and 580 feet bgs at the deepest level. The range of contaminant concentration is from 14 to 130 ug/l. The compound was not used at Mather AFB but appears to originate from a site up gradient of the base. The California Department of

Health Services has not set a maximum contaminant level under the Safe Drinking Water Act for this compound, but has issued a provisional action level of 18 ug/l.

A Comprehensive Baseline Risk Assessment was completed in August 1996 by the Air Force under the direction of the Department and US EPA. The Risk Assessment concludes that the contaminated groundwater could present an unacceptable threat to human health and safety if a drinking water well were installed into one of the contaminated hydrogeologic zones and an individual used the water as a source of drinking water.

1.04. The response actions at Mather AFB also include some 87 soil and subsurface soil sites. The contaminants of concern at those sites include metals, pesticides, PCB, dioxins, and volatile organic compounds. None of the identified soil and subsurface soil sites are located on the Property. Most of the sites within 0.25 mile of the Property have either been addressed in the ROD or have been identified as "No Further Action" sites.

Exterior lead-based paint contamination of the soil surrounding the two buildings on the parcel (Facilities 3636 and 2655) is of minimal concern. This is due to the age of the buildings (built in 1967 and 1970), the type of construction (stone, metal, stucco) and the relatively small amount of bare soil surrounding the buildings. A deed restriction protecting human health and the environment is not necessary for soils. Notification per Title X of Public Law 102-550 is required for the lead-based paint on the surface of the buildings.

## ARTICLE II DEFINITIONS

2.01. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.02. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

## ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs

with the land pursuant to Civil Code section 1471; (b) inures to the benefit of the Department and the Water Board and passes with each and every portion of the Property, c) is for the benefit of, and is enforceable by, the Department and the Water Board, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to Civil Code Section 1471, this Covenant binds all Owners and Occupants of the Property, and their agents, employees, and lessees. Pursuant to Civil Code section 1471(b), all successive Owners and Occupants of the Property are expressly bound hereby for the benefit of the Department and the Water Board.

3.03. Written Notice of Release of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the Owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. Covenantor agrees that the Owner shall provide notice to the Department and the Water Board not later than thirty (30) days before executing any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department and the Water Board shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed conveyance, except as otherwise provided by law.

#### ARTICLE IV RESTRICTIONS, NOTICE, ACCESS

4.01. Prohibited Activities. In order to protect human health and the environment, the following activities shall not be conducted at the Property without the prior review and written approval of the AF, the US EPA, the Department and the Water Board:

- (a) The Owner or Occupant of the Property shall not construct or permit to be constructed any well, and shall not extract, utilize, consume or permit to be extracted, any groundwater within the boundary of the property, and
- (b) The Owner or Occupant shall not conduct any alteration or excavation on the Property that is deeper than twenty (20) feet below ground surface (bgs), and

- (c) The Owner or Occupant shall not engage in any other activity on the Property that would interfere with or adversely affect the System on the Property or result in the creation of a groundwater recharge area (e.g., unlined surface impoundments or disposal trenches, not to include routine irrigation practices).

4.02. Limitation.

Covenantor, the Department and the Water Board further agree that this covenant shall not apply to nor restrict any alteration or excavation by the Owner or Occupant within twenty (20) feet bgs, and the Owner may perform any such alteration or excavation within twenty feet bgs without any prior approval being required so long as such alteration or excavation does not interfere with, or adversely affect the System on the Property or result in the creation of a groundwater recharge area.

4.03. Prior Approval, Notification of Disturbances.

- (a) With regard to the request of the Owner or Occupant for prior approval of the Department, the Water Board, AF and US EPA, the request shall be deemed approved by each of the governmental entities or agencies if no denial is received by the Owner or Occupant within thirty (30) days of receipt of the request by the entity or agency. All requests for prior approval, and approvals and denials thereof, shall be served pursuant to section 7.04. If an agency denies a request for approval, with or without prejudice, it shall state the basis for the denial.
- (b) The Owner or Occupant shall notify the Department, the Water Board, AF and US EPA of each of the following events: (i) the type, cause, location and date of any disturbance caused by the Owner or Occupant to the System that could affect the ability of the System to extract, treat and/or monitor the hazardous wastes or hazardous material under the Property, and (ii) the type and date of any repair of such disturbance as authorized by the AF. Notification to the Department, the Water Board, AF, and US EPA shall be made as provided in section 7.04 within ten (10) working days of both the discovery of any such disturbance caused by the Owner or Occupant and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants. If the Owner or Occupant becomes aware of any such

disturbance, even though not caused by the Owner or Occupant, notice shall be given as provided herein.

4.04. Access. The Department and the Water Board shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department and the Water Board in order to protect the public health and safety.

4.05. Access for Implementing Operations and Maintenance of the System. The entity or person responsible for implementing the operation and maintenance of the System on the Property shall have reasonable right of entry and access to the Property for the purpose of implementing the operation and maintenance of the System until the Department, the Water Board, the AF, and US EPA determine that no further Operation and Maintenance is required.

#### ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department and /or the Water Board to require that the Owner or Occupant modify or remove any Improvements ("Improvements" herein shall include, but not be limited to, all groundwater wells, surface impoundments, disposal trenches, buildings, roads, driveways, paved parking areas, water wells, and surface impoundments, constructed or placed upon any portion of the Property in violation of the Restrictions.) Violation of this Covenant shall be grounds for the Department and/or the Water Board to file civil or criminal actions as provided by law.

#### ARTICLE VI TERMINATION

6.01 Termination of Covenant. This Covenant and all of the restrictions provided herein shall terminate upon written determination by the Department and the Water Board that the groundwater in the vicinity of the Property has attained the remedial cleanup standards as required by the Soils and Groundwater Record of Decision. Such termination shall be made as promptly as possible and in such form as to be recorded in the Office of the County Recorder of Sacramento County.

#### ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer

of a gift or dedication, of the Property, or any portion thereof, to the general public or anyone else for any purpose whatsoever.

7.02. State of California References. All references to the State of California, the Department, and the Water Board include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Sacramento within ten (10) days of the Covenantor's receipt of a fully executed original and immediately after recordation of the quit-claim deed from the United States Air Force for the Property.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: County of Sacramento, c/o  
Paul Hahn, Director  
Economic Development Department  
700 H Street, Suite 7650  
Sacramento, California 95814

To Department: Anthony J. Landis, P.E.  
Chief, Northern California Operation  
Office of Military Facilities  
DTSC  
10151 Croydon Way, Suite #3  
Sacramento, CA 95827

To Water Board: Gary M. Carlton  
Executive Officer  
Central Valley Regional Water Quality  
Control Board  
3443 Routier Road, Suite A  
Sacramento, CA 95827-3003

To USEPA: Dan Opalski  
Chief, Federal Facilities Cleanup Branch  
USEPA Region IX  
75 Hawthorne St. (SFD-8-1)  
San Francisco, CA 94105-3901



To USAF: Dale Jackson  
NCARB  
AFBCA, Division D  
1700 N.Moore St., Suite 2300  
Arlington, VA 22209

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term or provision set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

"Covenantor"

Date: \_\_\_\_\_

By: \_\_\_\_\_

Department

Date: \_\_\_\_\_

By: \_\_\_\_\_

Water Board

Date: 4/20/98

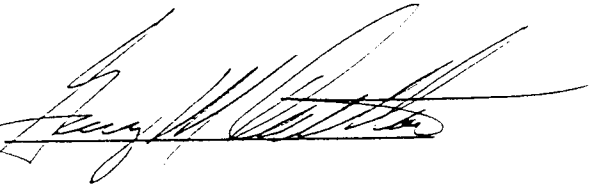
By: 

Exhibit A

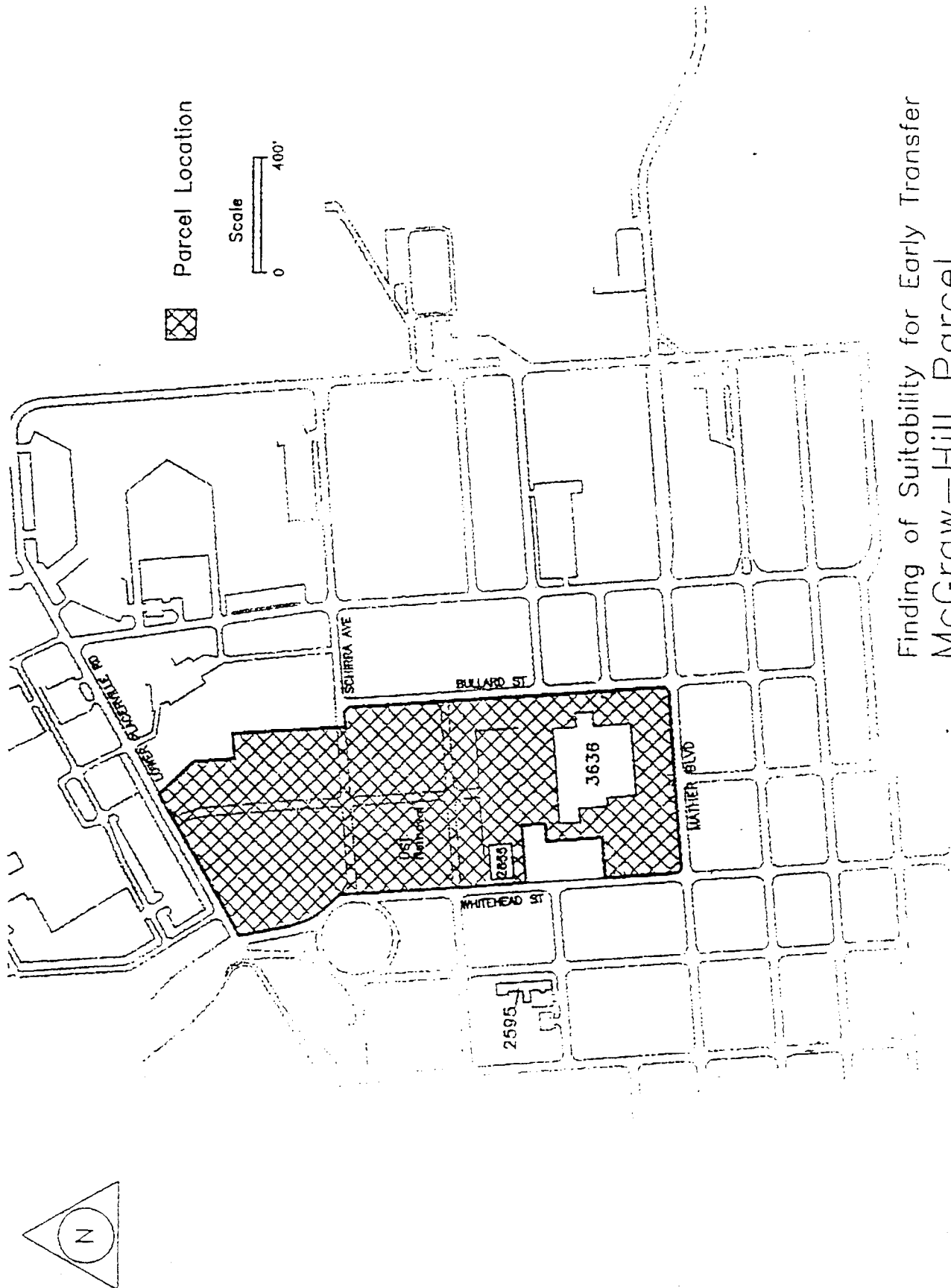
All that real property situated in the County of Sacramento, State of California, described as follows:

All that portion of the "Rancho Rio de Los Americanos" as shown on the Plat of Subdivision thereof surveyed in February, March and April, 1865 by T.J. Arnold, C.E. filed in the office of the Recorder of the County of Sacramento in Book 1 of Maps, Map No. 2 and being a portion of Mather Air Force Base described as follows:

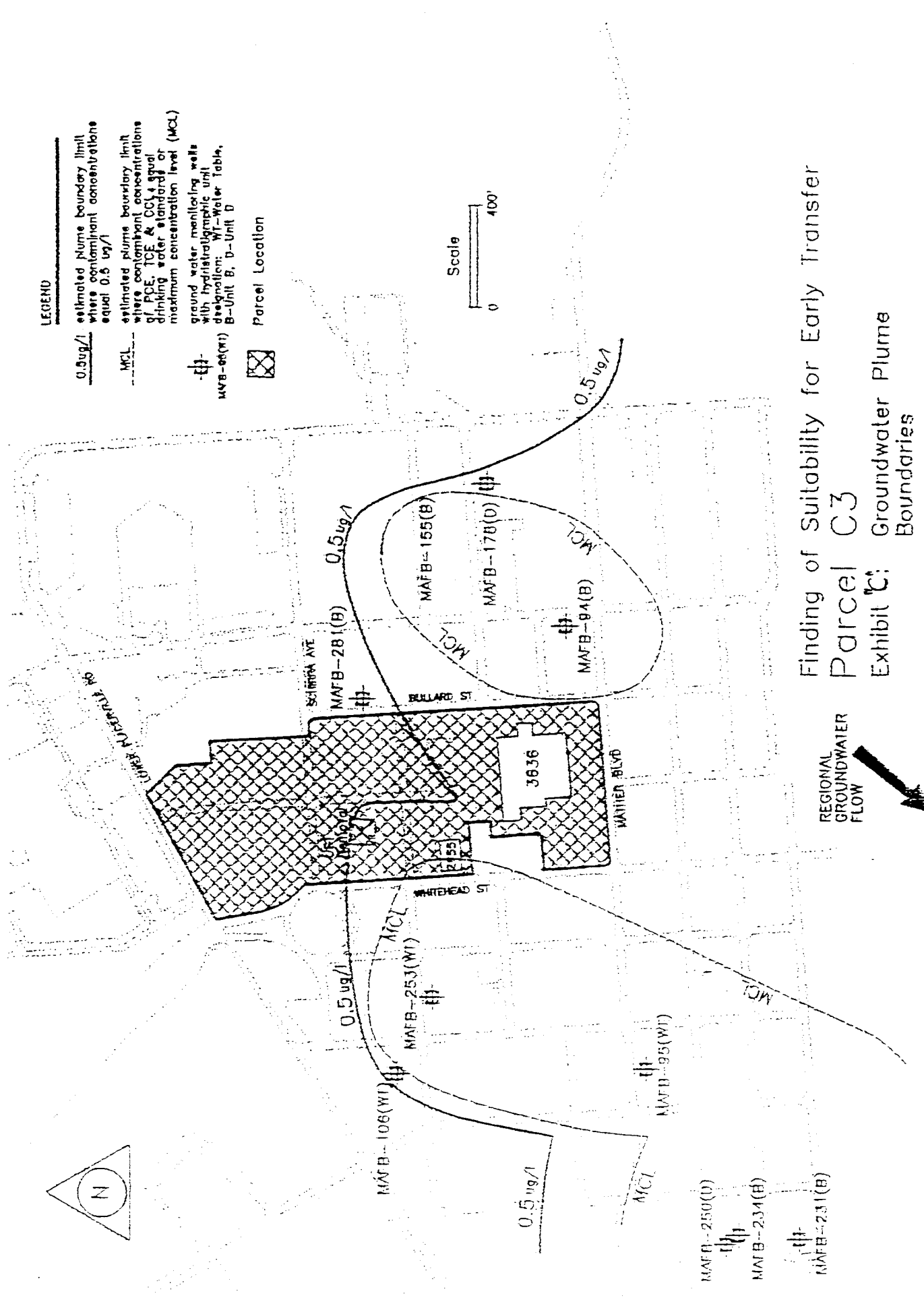
Beginning at the center line intersection of Mather Blvd. and Whitehead St. as shown on the construction plans for the "Mather Field Central Roadway Improvement Project" E.D.A. Grant No. 07-49-04045, Contract No. 3154, on file in the office of the Sacramento County, Public Works Agency, Dept of County Engineering, Transportation Division; thence from said point of beginning along said center line of said Whitehead St. North  $04^{\circ}30'09''$  West, 279.23 feet; thence leaving said center line of said Whitehead St., North  $85^{\circ}52'53''$  East, 171.60 feet; thence North  $04^{\circ}30'09''$  West, 188.70 feet; thence North  $85^{\circ}29'51''$  East, 62.15 feet; thence North  $04^{\circ}30'09''$  West, 113.28 feet; thence South  $85^{\circ}29'51''$  West, 233.75 feet to a point on said center line of said Whitehead St.; thence along said center line of said Whitehead St. the following five courses; 1) North  $04^{\circ}30'09''$  West, 582.49 feet; 2) along the arc of a curve concave to the southwest having a radius of 140.00 feet and a central angle of  $46^{\circ}28'07''$  the chord of which bears North  $27^{\circ}44'12''$  West, 110.46 feet; 3) North  $50^{\circ}58'16''$  West, 11.08 feet; 4) along the arc of a curve concave to the northeast having a radius of 230.00 feet and a central angle of  $46^{\circ}47'12''$  the chord of which bears North  $27^{\circ}34'40''$  West, 182.64 feet; 5) North  $04^{\circ}11'04''$  West, 20.14 feet; thence continuing along said center line of said Whitehead St. and the northerly prolongation thereof along the arc of a curve concave to the southwest having a radius of 310.00 feet and a central angle of  $16^{\circ}21'58''$  the chord of which bears North  $12^{\circ}22'03''$  West, 88.25 feet to a point on the center line of Lower Placerville Road as shown on that Record of Survey entitled "A PORTION OF THE TRACT OF WILLIAM E. BRYAN 2129.33 ACRES OF RANCHO RIO DE LOS AMERICANOS AS SHOWN ON THE PLAT OF SUBDIVISION THEREOF RECORDED IN BOOK 1 OF MAPS, MAP NO. 2 BEING A PORTION OF MATHER AIR FORCE BASE" filed in said Recorder's Office in Book 53 of Surveys at Page 33; thence along said center line of said Lower Placerville Road North  $59^{\circ}11'15''$  East, 599.62 feet to its intersection with the northwesterly prolongation of the westerly line of that 1.11 acre parcel shown on said Record of Survey filed in Book 53 of Surveys at Page 33; thence along said northwesterly prolongation and said westerly line of said 1.11 acre parcel the following five courses: 1) South  $49^{\circ}07'00''$  East, 152.98 feet; 2) South  $04^{\circ}51'30''$  East, 89.68 feet; 3) South  $51^{\circ}30'00''$  East, 27.75 feet; 4) South  $39^{\circ}00'00''$  West, 28.30 feet; 5) South  $04^{\circ}51'30''$  East, 52.96 feet to the southwest corner of said 1.11 acre parcel; thence along the southerly line of said 1.11 acre parcel the following three courses: 1) North  $85^{\circ}00'00''$  East, 68.51 feet; 2) North  $05^{\circ}00'00''$  West, 18.00 feet; 3) North  $85^{\circ}00'00''$  East, 29.17 feet, thence leaving said southerly line of said 1.11 acre

parcel South  $03^{\circ}22'33''$  East, 379.02 feet to a point on the center line of Schirra Ave.; thence along said center line of said Schirra Ave. North  $85^{\circ}26'59''$  East, 74.52 feet to its intersection with the center line of Bullard St.; thence along the center line of said Bullard St. South  $04^{\circ}47'50''$  East, 355.02 feet to its intersection with the center line of Armstrong Ave.; thence continuing along said center line of said Bullard St. South  $04^{\circ}30'19''$  East, 807.12 feet to its intersection with said center line of said Mather Blvd.; thence along said center line of said Mather Blvd. South  $85^{\circ}30'30''$  West, 677.95 feet to the point of beginning. Containing 24.953 gross acres more or less.

The herein described property being subject to public rights of way and public utility easements as described in the Grant of easement from the United States of America to the County of Sacramento recorded in Book 961030 Official Records at page 0607 in said Recorders Office.



Finding of Suitability for Early Transfer  
McGraw—Hill Parcel  
Exhibit **B**: Property Map



Finding of Suitability for Early Transfer  
 Parcel C3  
 Exhibit C: Groundwater Plume  
 Boundaries



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

ATTACHMENT 11

JUN 16 1998

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

MEMORANDUM

SUBJECT: Transmittal of "EPA Guidance on the Transfer of Federal Property by Deed Before All Necessary Remedial Action Has Been Taken Pursuant to CERCLA Section 120(h)(3)"

FROM: Timothy Fields, Jr.  
Acting Assistant Administrator

TO: Superfund National Program Managers, Regions I-X  
Office of Regional Counsel, Regions I-X

This memorandum transmits the "EPA Guidance on the Transfer of Federal Property by Deed Before All Necessary Remedial Action Has Been Taken Pursuant to CERCLA Section 120(h)(3)," otherwise known as the Early Transfer Guidance. This guidance is for the EPA Regions to use when reviewing requests from federal departments and agencies that are transferring property to defer the CERCLA Section 120(h)(3) covenant that all necessary remedial actions have been taken.

EPA is fully supportive of the early transfer process. When a transferee agrees to conduct the response action, this new authority provides other federal departments and agencies with an opportunity to secure cleanup by having other non-federal parties conduct cleanup. This could yield significant benefits to human health and the environment and savings to the taxpayer. In all instances, however, the landholding federal agency remains responsible for cleanup.

The Early Transfer Guidance benefits from the input of an interagency workgroup composed of EPA, the Department of Defense, the Department of Energy, and the General Services Administration. The interagency workgroup discussed several issues related to early transfer that are covered in this policy. Earlier versions of the guidance were also shared with ASTSWMO. This is, however, an EPA policy, not an interagency product.

The guidance establishes a process by which an EPA regional office should review an early transfer request. This process begins with the transferring federal agency submitting information of a sufficient quality and quantity to EPA which will support its request for a deferral and provide a basis for EPA to make its determination. This information should be submitted to EPA in the form of a Covenant Deferral Request (CDR). At base closure sites

**EPA Guidance on the Transfer of Federal Property by Deed Before All Necessary Response Action Has Been Taken Pursuant to CERCLA Section 120(h)(3) -- (Early Transfer Authority Guidance)**

**I. PURPOSE**

This guidance addresses the transfer by deed, under Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), of real property listed on the National Priorities List (NPL) held by a federal agency (landholding federal agency<sup>1</sup>) where the release or disposal of hazardous substances has occurred, but where all necessary remedial action has not yet been taken. This document provides guidance to the EPA Regions that have received a request from a landholding federal agency for the deferral of the covenant mandated by CERCLA Section 120(h)(3)(A)(ii)(I) that all necessary remedial action has been taken prior to the date of transfer. This guidance establishes EPA's process to determine, with the concurrence of the Governor, that the property is suitable for transfer prior to all necessary remedial action being taken.

**II. EPA's REQUIREMENTS FOR APPROVING A DEFERRAL REQUEST**

When a federal agency transfers to another person (i.e., an entity other than another federal agency) real property on which hazardous substances have been stored for one year or more, known to have been released, or disposed of, the deed must contain a covenant warranting that "all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of transfer" (the CERCLA 120(h)(3)(A)(ii)(I) Covenant) and that "any additional remedial action found to be necessary after the date of the transfer shall be conducted by the United States."<sup>2</sup> EPA, with the concurrence of the Governor of the State in which the facility is located, may defer the CERCLA Covenant for parcels of real property at facilities listed on the NPL.<sup>3</sup>

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<sup>1</sup> A landholding federal agency is the federal agency that holds custody and accountability for the property on behalf of the United States. 41 CFR 101-47.103.7

<sup>2</sup> CERCLA Section 120(h)(3)(A)(ii) sets forth the two components of the covenant that shall be contained in each deed. For purposes of this policy and the request for deferral, the term "CERCLA Covenant" refers only to the first component contained in Section 120(h)(3)(A)(ii)(I).

<sup>3</sup> For non-NPL sites, the Governor of the State in which the facility is located may defer the CERCLA Covenant.

stated in Section 120(h)(3)(C)(iv), all statutory obligations required of a federal agency remain the same, regardless of whether the property is transferred subject to a covenant deferral.

### III. APPLICABILITY AND SCOPE

This guidance applies to all early transfers by deed under CERCLA Section 120(h) of contaminated real property owned by a federal agency and listed on the National Priorities List (NPL), regardless of the statutory authority underlying a cleanup, including transfers of property at DoD installations selected for closure or realignment.

This guidance does not apply to federal-to-federal transfers of property or to transfers of uncontaminated property. A federal agency that is sponsoring a public benefit conveyance may use this guidance as a model for obtaining useful information. Under a public benefit conveyance, a sponsoring federal agency acts as a conduit through which title will ultimately pass from the United States to a public benefit recipient. For further information regarding the relationship between a sponsoring federal agency and the Department of Defense (DoD) for Base Realignment and Closure (BRAC) property (a landholding federal agency), please see the Memorandum of Agreement signed by DoD and the federal agencies that sponsor public benefit transfers (dated April 21, 1997).

### IV. GUIDANCE

EPA should generally not consider deferral of the covenant request for real property unless the landholding federal agency submits a Covenant Deferral Request (CDR) containing the information recommended by this guidance.

While the statute does not explicitly require a signed Interagency Agreement (IAG) to be in place as a prerequisite for deferring the covenant requirement, EPA believes that the existence of an IAG will significantly aid the Agency in making the covenant deferral decision.

#### A. Covenant Deferral Request

As discussed in Section II, EPA may defer the CERCLA Section 120(h)(3) covenant requirement if EPA determines that a property is suitable for transfer based on certain findings. To commence the process, the landholding federal agency should submit information of a sufficient quality and quantity to EPA to support its request for deferral and provide a basis for EPA to make its determination. This information should be submitted to EPA in the form of a Covenant Deferral Request (CDR). EPA should consider a CDR complete when it includes all of the following components.



and the cleanup remains subject to the requirements of Section 120.

### 3. Analysis of Intended Land Use During the Deferral Period

A description of the intended land use of the property during the deferral period and an analysis of whether the intended use is reasonably expected to result in exposure to CERCLA hazardous substances at sites where response actions have not been completed. This analysis should be based on the environmental condition of the property and should consider the contaminant(s), exposure scenarios, and potential and actual migration pathways that may occur during the future use. Where a potential or actual unacceptable exposure to hazardous substances is identified, the analysis should identify what response actions should be taken to prevent such exposure. Treatment, engineering controls and use restrictions (see Section 6.d - Response Action Assurances), may be considered as a means of limiting unacceptable exposures to hazardous substances while allowing for property reuse. Any other response actions necessary to protect human health and the environment should be included in the deed (or other agreement governing the transfer) as described in Subsection 6 of this policy. The land use during the deferral period cannot be inconsistent with any necessary response actions.

### 4. Results From A Risk Assessment

Results from a CERCLA risk assessment, taking into consideration reasonably anticipated future land use assumptions. There is a presumption that the Covenant Deferral Request include the results from a completed risk assessment, as defined in the National Contingency Plan (NCP) and EPA guidance. However, the landholding federal agency should have an opportunity to demonstrate why a risk assessment does not have to be completed before the land is transferred. An example of when this may occur is when the intended use will be similar to or the same as current use (e.g., airport runways), and there are already appropriate access controls, institutional controls, etc. in place or response actions have mitigated exposure (e.g., removals). In such instances these actions should prevent the creation of new exposure pathways or create conditions that already protective.

When determining whether a completed risk assessment is needed before the early transfer, the EPA Region should take into consideration, at a minimum, the degree of uncertainty regarding the potential risks posed by the contamination; existing analyses; certainty about future use; and who is conducting the response. The greater the uncertainty about the risk from the contamination, the more information EPA may require. As noted below, the landholding Federal agency remains responsible for all necessary response actions, including the risk assessment.

ensure the protection of human health and the environment;

ii. provide that there will be restrictions on the use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;

iii. provide that all necessary response action will be taken and identify the schedule(s) for investigation(s) and completion of all necessary response action(s) as approved by the appropriate regulatory agency; and

iv. provide that the landholding federal agency has or will obtain sufficient funding through either: (a) submission of a budget request (or budget requests in the event multi-year funding is needed) to the Director of the Office of Management and Budget that adequately addresses schedule for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations; or (b) sufficient current appropriations to accomplish investigation(s) and completion(s) of all necessary response action(s). In addition to (a) or (b), the landholding federal agency may also have an agreement with the transferee to fund and/or accomplish all or part of the remediation.

The Response Action Assurances should include a description of requirements to assure the protectiveness of the response action and shall specify the mechanisms for assuring that such measures remain effective. These measures should reflect discussions among the reuse entity, the community, the landholding federal agency and any appropriate federal, State, or local government.

#### 7. Responsiveness Summary

The final CDR should include a response to comments document which contains the landholding federal agency's responses to the written comments received during the public comment period under Section 120 (h)(3)(C)(I)(III) and to the written comments received from the regulatory agencies on the draft CDR.

#### 8. Transferee Response Action Assurances and Agreements

A transferee may agree to conduct response actions on the property. However, the landholding Federal agency remains responsible for ensuring that all necessary response actions including , as appropriate, investigations and requirements under an IAG are done.

When property is transferred prior to completion of the cleanup, the landholding federal agency should include in each deed provisions notifying the transferee of

as required under Federal regulations.

If the landholding federal agency submits information supporting the technical and financial assurances, but the EPA Region disagrees with the adequacy of such assurances, and they cannot resolve their differences, there will be the opportunity to elevate the disagreement to the federal agency headquarters and EPA Headquarters. The EPA Region should contact the Federal Facilities Restoration and Reuse Office in OSWER and the federal agency should elevate the issue to its headquarters component when resolution cannot be reached at the Senior Manager level. EPA Headquarters and the headquarters of the landholding federal agency will resolve the disagreement in an expeditious fashion so as not to delay transfer.

The transferee should agree to conduct all necessary environmental response actions in accordance with CERCLA and the National Contingency Plan (NCP). In the case where the transferee does not perform cleanup in accordance with CERCLA and the NCP or the terms of a cleanup agreement, then the United States may enter the property and perform any necessary response action.

#### B. Process for Requesting Covenant Deferral

Before preparing a CDR, the landholding federal agency should notify the Administrator of EPA or designee and the Governor of the State of the intent to request a CERCLA Covenant Deferral and invite participation in the development and review of the draft CDR. This notice should allow sufficient time for EPA, and State agencies, to participate in the development and review and comment on a draft CDR.

As required by Section 120(h)(3)(C)(I)(III), the landholding federal agency must provide notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer. The notice should include:

1. The identity of the property proposed for transfer, the proposed transferee and the intended use of the property;
2. A statement that the property is listed on the National Priorities List and that the proposed transfer is pursuant to CERCLA 120(h)(3)(C) which allows the transfer of federal property before remedial action is completed when certain conditions are satisfied;
3. An assessment of whether the transfer is consistent with protection of human

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the real property to be transferred. Obtaining a security interest in the transferee's assets may be used as a means of assuring project completion.

remedy is "operating properly and successfully"<sup>6</sup> pursuant to CERCLA Section 120(h)(3)(B) (regardless of whether the landholding federal agency or the transferee has taken the action), the landholding federal agency shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken. This warranty will satisfy the requirement of CERCLA Section 120(h)(3)(A)(ii)(I).

## V. NOTICE

This guidance and internal procedures adopted for implementation are intended solely as policy for employees of the US EPA. Such guidance and procedures do not constitute rule making by the Agency and do not create legal obligations. The extent to which EPA applies this guidance will depend on the facts of each case.

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<sup>6</sup> See, "Guidance for Evaluation of Federal Agency Demonstrations That Remedial Actions Are Operating Properly and Successfully Under CERCLA Section 120(h)(3)," August 1996, NTIS PB97-143770; <http://www.epa.gov/swerffir>.